IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL APPEAL NO.384 OF 1989

Sangharaj Bhogappa Kamble,)
aged 24 years, Occupation - Service,)
residing at Survey No.12,)
Laxmi Nagar, Yerwada,)
Pune - 6.).. Appellant
(Org.Accused)

Vs.

The State of Maharashtra,)
(Copy to be served on the Govt.)
Pleader, High Court, Bombay.).. Respondent

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Shri M.R.Katikar for the Appellant.

Shri K.V.Saste, APP for the Respondent.

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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 10th February, 2005.

ORAL JUDGMENT : (Per P.V.Kakade, J)

1. The appellant has preferred this appeal against the judgment and order passed by the learned Additional Sessions Judge, Pune, dated 8th May, 1989 whereby he found that the appellant is guilty of the offence punishable under Section 302 of the Indian Penal Code and therefore sentenced him to suffer

imprisonment for life.

2. The facts giving rise to the case, in a nutshell, are thus :

. The complainant-Amarsing Nihalsing Pardeshi, P.W.4, is a retired P.M.T. employee, resident of Laxminagar, Yerwada, Pune, along with his wife, daughter Leena, Son-in-law Prafulla and son of the deceased, who was working as Electrician in a Garage at Camp area of the Pune City. His duty hours were from 8.30 a.m. to 7.30 p.m. The appellant-accused as well as the deceased were the neighbours and were friends of each other for long time.

. On 5th November, 1988, the deceased, as usual, had gone on duty at about 8.30 a.m. and returned at about 7.30 p.m. and took his dinner with his family members. When he was chit-chatting with his family members at about 9.30 p.m. to 10.00 p.m., the accused came to the house of the deceased and asked him to join him in drinking liquor. However, the deceased said that he had already taken dinner and therefore refused to take liquor. The accused was accompanied by one of his friends. The accused insisted that the deceased should go with the accused. The deceased

agreed to the same and went out of his house and thereafter the accused, his friend and the deceased sat on the Ota of the complainant's house. The accused and his friend then consumed liquor. After some time, the accused started talking in incoherent manner. At that time, father of the accused came on the scene and after seeing that the accused, his friend and the deceased were consuming the liquor, he got angry and asked the accused to leave the place and stop drinking. On that account, there was exchange of words between the accused and his father. As a result, the accused slapped his father in presence of the others. The father of the accused also slapped the accused. At that time, the deceased intervened and asked the accused why he was abusing his father and further why he had given a slap to his father. The accused, therefore, questioned the deceased as to why he was intervening in the quarrel between the son and the father. At that time, father of the deceased tried to intervene but he was also pushed aside and he fell down on the ground. The accused then took out a knife from his pocket and stabbed the deceased Sunder causing him bleeding injury. While the quarrel was going on, sister of the deceased, Leena (P.W.5) also came on the scene and saw her brother was assaulted by the accused. As a result of sudden blow on the vital

part of the body with a knife, the deceased collapsed on the ground and commotion was raised by the witness Leena, who saw the incident, and as a result thereof, several other persons including the relatives of the deceased as well as neighbours came on the scene. The accused and his friend went away from the spot abandoning the knife at the spot. The complainant, father of the deceased, immediately brought chaddar from the house and wrapped over the deceased and thereafter, rickshaw was called and the deceased was taken to the hospital. The complainant, father of the deceased, then went to the police chowky to lodge complaint against the accused. The PSI Patel, who was at the police chowky, was questioning the complainant at which time, he received telephonic message from Sassoon hospital that the deceased had died before getting any medical aid. Consequently, the complainant's FIR was recorded and the offence under Section 302 of the Indian Penal Code was registered against the accused person at Crime No.331 of 1988 at the police station.

3. On registering the offence, the investigating machinery swung into action in which the investigation officer visited the spot and made panchanama thereof in presence of Panchas. In the course of panchanama,

several articles were seized which were, in due course, sent to the Chemical Analyser for examination and whose report is being on record. The articles were seized with blood stains of the deceased Sunder. The search was made for the accused person and finally he was subjected in the house of one Mahadev Appa Koli, relative of the accused and immediately he was apprehended and brought to the police chowky and arrested him under panchanama Exhibit-26. In the meanwhile, inquest panchanama was made and the body was sent for post-mortem. The post-mortem report was received in due course and the same is a part of record. The blood stained knife, Article-A, was found lying at the spot which was also seized by the investigation officer and was sent to the Chemical Analyser for examination. On the arrest of the accused, his blood stained clothes were also seized under the panchanama. It is the case of the prosecution that the accused person had hidden his other blood stained clothes and those were attached at the instance of the police when the accused had taken the police to the said spot. Memorandum was made according on the facts discovered in the process. The statements of several witnesses were recorded. On receiving the Chemical Analyser’s report and completion of the investigation, charge-sheet was sent

to the Court of law.

. The learned Magistrate committed the case to the Sessions Court, Pune, as the case was exclusively triable by the Sessions Court, Pune. The learned Additional Sessions Judge, Pune, framed the charge against the accused for commission of the offence of murder under Section 302 of the Indian Penal Code. The accused pleaded not guilty to the charge. The defence of the accused is that of total denial of criminal liability. It was suggested on behalf of the accused that he has been falsely implicated in the case and the deceased got injured either due to broken pieces of glass lying at the spot or due to goring up by buffaloes. The learned trial Judge proceeded to record investigation of the prosecution and on the basis of that, he held that the evidence is sufficient to bring home the guilt of the accused and discarded the defence theory, as noted above. Consequently, the order of conviction and sentence came to be recorded against the accused. Hence the appeal.

4. We have heard the learned counsel for the appellant as well as the learned APP at length. We have perused the entire evidence on record.

5. It must be noted initially that it is the case balanced on the direct evidence led by the prosecution, and therefore, it would be proper on our part to take into account the ocular evidence on record.

. P.W.4 -Amarsing Nihalsing Pardeshi, father of the deceased, who is also the complainant, has stated that on 5th November, 1988, his son Sundar had taken dinner after returning from his duties and was talking with family members at which time, the accused along with his one friend came there at about 9.30 to 10.00 p.m. and asked the deceased to join him in drinking liquor. The deceased declined saying that he had taken dinner, but finally the deceased agreed to accompany the accused and his friend and sat on the Ota of the house where the accused and his friend had started consuming liquor. After some time, the accused started talking in incoherent manner. As a result of which, father of the accused arrived at the scene, quarrelled with his son-the accused, during which course, father of the accused slapped the accused and the accused returned the slap to his father, at which time, the deceased intervened and asked the accused as to why he is abusing and assaulting his father. However, the accused got

enraged and asked the deceased to keep himself out from their quarrel. At that time, the complainant, father of the deceased, also tried to intervene in the scuffle. However, the accused pushed father of the deceased, as a result, he fell down and the accused thereafter took out the knife from his pocket and stabbed his son Sunder, as a result, Sunder fell to the ground in bleeding condition. The witness Leena (P.W.5), complainant's daughter, rushed to that place and caught the deceased while he was falling down. His son-in-law as well as other relatives and the neighbours came on the scene and the accused and his friend abandoned the weapon of the offence and rushed away. The deceased was thereafter immediately taken to the Sasoon Hospital in a rickshaw where he succumbed to his injuries.

. Now the said version given by the complainant Amarsing is totally corroborated by the P.W.5 Leena, complainant's daughter and sister of the deceased. She has stated that when her father approached them to separate and intervene the accused, he was pushed away by the accused and as a result of which, he fell to the ground. She went there to rescue her father, at which time, the accused took out the knife from the pocket of his trouser and stabbed on the stomach of

her brother, as a result, her brother fell down.

. It is therefore quite evident that both these eye witnesses have given accurate account of the assault committed by the accused person, which is again corroborated by the version given by the complainant in the FIR Exhibit 20, which was recorded immediately after the incident at the police chowky by P.W.10 - P.S.I. Hazrat Pasha Patel. This aspect eliminates all the possibilities of false involvement of the accused person in this case. Moreover, there is absolutely no reason as to why the complainant as well as Leena, P.W.5, should falsely implicate the accused person in this case, in the manner, as suggested on behalf of the appellant. In other words, after going through the entire testimony of both the eye witnesses, coupled with the entire circumstantial evidence on record, we are of the view that the evidence of the eye witnesses is sufficient to inspire confidence and there is no doubt whatsoever regarding its truthfulness, and therefore, we are inclined to accept it in toto.

6. The ocular evidence is further corroborated by the medical evidence on record and the testimony of Dr.Sudhir Nanadkar, who has conducted the post-mortem

examination, shows that the deceased suffered following injuries.

"Inj.1. Oblique spindle shaped stab wound seen over right lower anterior chest wall, gapping present, red 20 cms. below middle of right claricle and 7 cms. lateral right of midline and 4 cms. above related part of right costal margin in 6th inter-costal space measuring 2 x 0.5 cms depth, approx. 15 cms. direction medially, slightly backwards and upwards. On dissection related soft tissues and muscles, of inter costal space out with blood vessels leading to stab injuries of diaphragm beneath wound and again at heart percordium (antero Rt.lateral and interior part).

2 stab injuries to diaphragm, one in relation to external wound and other in relation to heart passing through abdominal cavity, left intero-lateral part of pericordium shows stab injury/ with stab injury of heart, right ventrical approx. 1.4 x 5 cm. entering right ventricle.

The same stab wound associated with about 150 cc.haemo pericordium (blood clotted with liquid) and about 700 ccm haemo peritoneum as wound is continuous in peritoneal and pericardial cavities. The right infro-lateral half wound contained in semicircular abraded contusion about 3.2 x 1 cm. dark red, convexity, facing medial (impression).

Inj.2. Obliquely irregular abrasion seen over left scapular region of back about 4.2 x 1.3 cms.dark red.

All these injuries were antemortem,

and of recent origine."

7. This aspect clearly shows that there were three injuries on the person of the deceased. He has further stated that, in his opinion, the cause of death was due to the injuries, and Injury No.1 was, in the ordinary course, sufficient to cause death.

. The medical evidence is again supported by the circumstantial evidence regarding the attachment of blood stained clothes of the accused person, at his own instance, when he accompanied the police to show the place where he kept his blood stained clothes, which were seized by the police under the panchanama. The Chemical Analyser’s report on record shows that the blood stains on the clothes of the deceased as well as the accused person were that of human blood, though the blood group of the deceased could not be ascertained positively. However, the fact remains that the clothes of the accused person were smeared with human blood and such clothes were found hidden by him immediately after the incidence before his arrest on that very day. Therefore, this evidence along with the other circumstances proved by the evidence of the investigation officer leaves no doubt whatsoever that the authorship of the crime has to be attributed to the accused person and none other.

8. The learned counsel for the appellant vehemently urged that the entire fact situation involved in this case would be sufficient to show that there was no intention to kill the deceased and therefore, he should be given benefit of the said position, in the sense that the offence should be at the most held to be under Section 304 (I) or (II) of the Indian Penal Code. We have given our anxious consideration to this submission. However, the medical evidence on record coupled with the ocular evidence is sufficient to show the intention of the accused person. It is not the case of a single stab injury inflicted on a person of the deceased in heat of the moment during quarrel situation between the parties. The medical evidence is sufficient to show that the first injury was on the vital part, like heart, which was sufficient on its own to cause death in ordinary course of its nature. Besides, there were two injuries, one in relation to the external wound and other in relation to heart passing through abdominal cavity. This aspect would show the ferocious assault on the deceased and therefore, it should rule out any possibility of leniency to the accused person. In other words, there was, no doubt, an intention of the accused to kill the deceased at

the relevant time.

9. The learned counsel for the appellant has sought to take various grounds in defence of the appellant. For instance, it was suggested that there was absolutely no light available at the time of the incidence at the spot and, therefore, ocular testimonies of both the witnesses should be discarded, however, no suggestion was putforth to that effect by the defence in the course of trial during cross-examination. On the other hand, the evidence of spot panchanama as well as of the witness Khaire, P.W.8, Maintenance Surveyor from C.T.S.Office, Pune, would definitely show that there was light and it was was indeed available at the relevant time. Evidently, the incident had taken place at 10.00 to 10.30 p.m. in the night and the spot of offence is located in the heart of the town. It is inconceivable that there was total darkness so as to render identification impossible. This is especially so when both the families knew each other and infact the presence of the accused was not only established by the entire evidence on record but was infact putforth through the cross-examination of the witnesses, therefore, the submission that there was no light at all at the spot of offence to witness the incidence by the witnesses,

is devoid of any merit and cannot be accepted even for a moment.

. The learned counsel for the appellant also sought to submit that the deceased must have suffered injuries due to pieces of broken glass or even due to goring by buffaloes. However, there is absolutely no foundation made out to putforth this suggestion. Firstly, there were no broken pieces of glass found at the spot of incidence, as can be seen from the panchanama. Moreover, the bottle which was found at the spot was intact and was not broken at all. Similarly, there is no circumstantial evidence to show that any buffalo was wondering at the spot of offence at any moment, and therefore, this suggestion would require no further elaboration, and therefore, the same cannot be considered for a moment.

10. It was also suggested on behalf of the appellant that the prosecution did not examine the mysterious friend who was with the accused person at the relevant time and place. The evidence of the investigation officer also does not throw any light on the position whether any effort was made to trace out the said person or not. However, mere absence of identification of such person would be of no help to

the defence especially when no overtact has been attributed to that person and therefore, lack of his identification is of no help to save the accused person in any manner whatsoever.

11. For the reasons recorded above, we are satisfied that the authorship of the crime involved in this case can squarely be attributed to the accused person and none else and the evidence led by the prosecution is sufficient to bring home the guilt of the accused person, and hence, we dismiss the appeal.

. The appellant is on bail. His bail bond stands cancelled. The appellant shall surrender to the Sessions Court, Pune, within eight weeks from today to undergo his sentence.

(R.M.S.KHANDEPARKAR, J)

(P.V.KAKADE, J)